

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2013060965

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 24, 2013, Parent on behalf of Student filed a due process hearing request¹ (complaint) naming the Torrance Unified School District (District) and the Los Angeles County Office of Education (LACOE).

On July 8, 2013, District timely filed a notice of insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges that Student is in twelfth grade and currently eligible for special education under the categories of severe learning discrepancy (SLD) and speech and language impairment (SLI). The complaint alleges that despite Student’s history of marijuana use, truancy, maladaptive behaviors and suspensions throughout high school, District failed to assess Student for social/emotional problems and offer or provide a program to address Student’s emotional distress related behaviors. The complaint alleges that an individualized education program (IEP) amendment, dated June 8, 2011, was based on insufficient assessment, incomplete, failed to address Student’s needs, and included a behavior support plan (BSP) that was never implemented. The IEP of October 3, 2011 allegedly failed to include an appropriate transition plan, and was also based upon inadequate assessment and failed to consider Student’s unique needs. Student alleges that District ignored escalating behaviors, and that Parent was ultimately required to unilaterally place Student in a residential treatment center (RTC) in Utah in April 2012 to address those behaviors. When Student returned for the 2012-2013 school year, District placed him in the same inappropriate classroom at a District high school without supports, before moving him

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

to a LACOE run program at another site without an IEP team meeting, which program Student “ditched” almost every day with no action by District. On November 1, 2012, Parent unilaterally placed Student in another RTC in Utah due to Student’s behaviors. Student asserts two claims: that District failed to offer Student a free appropriate public education (FAPE) for (1) the 2011-2012 school year and (2) the 2012-2013 school year, by failing to adequately assess Student, to offer or provide special education and related services to meet Student’s unique needs, or to follow proper procedure in developing Student’s IEPs. As resolutions, Student requests that District (i) reimburse Parent for costs associated with his private RTC placements, (ii) provide compensatory education, and (iii) reimburse parent for legal fees incurred.

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. District contends that the contents of the June 2011 IEP are beyond challenge as outside of the statute of limitations, and that the allegations regarding failure to implement the BSP lack detail. However, the complaint alleges notice to District of post-IEP escalation in behaviors, as well as actions and inactions by the District in response thereto, including the annual IEP dated October 3, 2011, that would support Student’s claims of denial of FAPE during the 2011-2012 and 2012-2013 school years. As to the failure to implement the BSP, and other substantive and procedural errors, Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student’s statement of the claims is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 08, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings